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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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**In the Matter of**

**Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming** | **CS Docket No. 98-102**

July 23, 1998

To Whom it May Concern:

The Cable Communications Agency of Indianapolis would like to thank the FCC and those involved for this opportunity to file comments regarding the *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming.* As the local cable franchising authority representing nearly 200,000 cable subscribers in Indianapolis and Marion County, competition to the cable operator incumbents of Time Warner and Comcast is of paramount interest and priority for the constituency we represent. The most frequently asked questions of our office staff are *"Why can't I have a choice of cable TV providers"? "When will there be competition"? "How can you (we/FCC) allow cable rates to go up as often and as much as you do?"*

**Unregulated, Comcast Increases Rates Without any Apparent Justification**

The FCC is seeking information in this annual assessment on a wide range of issues. One of these issues is on programming offered on "mini-tiers" or a la carte. Under the Commission rules and the ensuing latitude that so called *Social Contracts* give the cable operator, these "mini-tiers" or a la carte program packaging become migrated product tiers (MPTs) that are unregulated. These unregulated service tiers are a good example and glimpse as to how the cable industry may behave in an unregulated environment. For example, Comcast of Indianapolis informed the Cable Agency in July that a nearly three dollar increase was coming in August for Comcast's unregulated tier *Value Pak,* (see attached news clippings and Comcast news releases). Also, that the increase would not be pro-rated on the subscribers' bill as other increases had been previous so as to make the increases 'more uniform'. This 'uniformity' also was given as a primary reason as to why Comcast raised the rates of its premium fare shortly after the first of the year in Indianapolis. A pro-rated increase based on the actual days of the billing cycle is more fair than a non-pro-rated increase. All previous increases have been pro-rated based on billing cycle. This huge increase to an unregulated tier in an uncompetitive environment seems to evidence a real sense of arrogance on behalf of the cable operator, Comcast. Is this what the FCC had in mind when it deregulated cable television?

In its reasoning to allow for a deregulated migrated product tier, the FCC said that the pricing for an MPT would be market driven. Where in any market, not subject to a cable overbuild, do you have a comparable programming service tier that would therefore contribute to market forces driving the price? We are not aware of any direct broadcast satellite (DBS) arrangement in this jurisdiction that breaks out the services of programming that Comcast offers in its MPT (Comedy Central, TBS, Romance Classics, WGN, TNT, Discovery Channel, TV Land and soon the Game Show Networkthe FCC said that the pricing for an MPT would be market driven. Where in any market, not subject to a cable overbuild, do you have a comparable programming service tier that wou%od therefore contribute to market forces driving the price? We are *not aware of any* direct broadcast satellite (DBS) arrangement in this jurisdiction that breaks out the services of programming that Comc⅓st offers in its MPT (Comedy Central, TBS, Romance Classics, WGN, TNT, Discovery Channel, TV Land and soon the Game Show Network). The Game Show Network was the only new channel added to this MPT (thus *justifying a rate increase under the Commission rules), which doubtedly carr*ied much weight into Comc⅓st=s programming costs in calculating the rate increase. In fact, a Multi Channel News article (see attached) of April 27, 1998 suggests that the Game Show Network is paying launch fes that Comcast has added to its CPST and now MPT have been linked to launch fees via the recent trade articles: Animal Planet, Game Show Network, E, Home & Garden TV, PAX-NET and Great American Country. A suggestion here would be to offset launch fees against increased programming costs when calculating rate increases.

Comcast also implemented this increase nine months following their normal, obligatory, November 1 date to implement increases for their MPT and expanded basic services tier (CPST) per Form 1240 rules. Comcast told the Cable Agency that a major part of their reasoning for an August rather than November increase was that November was election time and a November increase would be closer to the March 1999 regulation sunset date. Comcast also stated to us that DBS' major advertising tends to occur at Christmas time and Comcast didn't want to give DBS ammo for their ads by taking an increase in November.

Our concerns for deregulation are real. If this is how Comcast behaves in a monopolistic, deregulated environment, then what are we to expect from the entire cable industry after March of 1999? We believe that the FCC's rules to deregulate the MPT were a mistake. The increases are not driven or held in check by market forces. Comcast has eveidenced that it does not behave as a good actor in that spirit of deregulation. The Cable Communications Agency recommends that the March 1999 regulation sunset date be postponed indefinitely until *real effective competition* is available to all in any given cable franchising jurisdiction. We also respectfully ask the FCC to investigate cash-for carriage arrangments and how this affects everything from rate increase criteria (such as 20 cents per sub per month per new channel added) to evading the reporting of gross revenues to cities and towns. At a minimum, rate regulations should require operators to offset launch fees against programming costs in calculating rate increases.

**Effective Competition Issues**

The FCC asked for comments in this assessment as to whether its definitions and criteria for effective competition were acceptable, and if they were not, to suggest any possible alternatives. We would state for the record that the criteria for effective competition is not acceptable. It should be based solely on evidence of competitive pricing for the long term. As an example, where Ameritech has overbuilt incumbent cable operators in the Midwest, there has been long term evidence of prices stabilizing, price cuts, increased programming offers (free premium fare) and other benefits. (see attached *Multi Channel News* 6/29/98 page 8A/*Cable World* May 19, 1997 page 46). This is the measure of competition that should be used without adding numbers, percentages or other criteria to the equation and eliminating the possibility that the operator may artificially lower its prices over the short term in order to receive a favorable effective competition ruling from the FCC.

**SBC/Ameritech Merger**

In its annual assessment, the FCC has asked for comments pertaining to mergers, clustering and consolidation. If the real intent of the 1996 Telecommunications Act was to promote competition and simply not to deregulate for deregulation's sake, then those in the decision making process should vigorously oppose the proposed Ameritech/SBC merger with every fiber in their being. Ameritech's New Media cable overbuilds in the Midwest are one of the very few and very best examples of cable TV competition in the world........period. As evidenced by the attached documentation, Ameritech has stabilized cable pricing in the markets they overbuild, even forcing down pricing and forcing incumbents to skip the obligatory price increases so conveniently afforded to them via the various rate orders, social contracts and other methods of profit taking available through the FCC.

The attached documentation shows (*Cable World* May 25, 1998), SBC has exhibited no patience in operating any of its video properties in whatever form they may take, whether cable or wireless. They will be more likely than not willing to halt Ameritech's steam rolling train of cable TV franchise acquisitions. Those policy makers who would be so inclined to approve the SBC/Ameritech merger would remove the best case scenario for cable TV competition and thereby make any process such as this assessment designed to foster competition , totally beside the point. The likely resultant removal of existing competition and potential competition would be devastating following an SBC/Ameritech merger.

The jury is still apparently out as to whether cable overbuilds are indeed profitable. Certainly a few studies have been done that would indicate that they are not. If they are not, then the cable industry *is indeed a monopoly and should be regulated as such.* All studies aside, whether Ameritech does make a profit on its cable venture, may never be known publicly should the SBC/Ameritech merger be approved.

Some have argued that Ameritech is subsidizing its cable venture with its profits from its telephony platform. The Ohio and Michigan Public Utility Regulatory Commissions have decried and voted against Ameritech using promotional free telephony services as a way to sell its cable TV services. Is that not competition? Does this marketing scheme not favor the public? Are the cable companies not subsidizing their telephony platform with their cable service revenues? Let them compete! The idea is to bring out competition in cable TV and local phone services (LEC). Let the FCC tweak the details later once the competition has been established and the consumer has benefited.

**Incumbent Cable Operators as Competitors**

Relatively few cable TV overbuild studies have been conducted, such as those by the Strategis Group, yet they point to the notion that cable overbuilds are not profitable or have a very low return for profitability. These studies have examined Ameritech and municipal cable TV overbuilds done from the ground up. What the studies have ignored and no study has examined is the profitability of cable overbuilds that would be constructed by incumbent operators who buffer another operator and are simply extending their plant into the other's territory. Many of the economies of scale would be in place such as management, headends, staffing, marketing, programming, etc., to make this a more viable proposition as opposed to overbuilds that start from ground zero. Add to this the projected revenue to be attached to the head of each subscriber as cable offers more services, such as digital offerings, interactive services, cable modem service, etc., and one has to wonder why there are not more overbuilds.

The cable industry has successfully spun its lobbying efforts over the years protecting its piece of unsliced pie by telling policy makers and legislators that cable overbuilds are not profitable. We would counter otherwise. But should the National Cable Television Association be correct in their assessment, then the industry is a monopoly and should be regulated accordingly. Ameritech has shown that the best case scenario for true competition in the cable industry is in the form of a wireline overbuild because it represents an apples to apples comparison of services offered by the incumbent. The FCC and other policy makers should make *every effort* to initiate and legislate language that fosters more cable overbuilds as the model for competition to the cable industry in this country. It is because of this potential competition *within* the industry itself, that we strongly oppose clustering and mergers *within* the cable industry.

In Indianapolis, both cable operators have been awarded franchise territories for the entire county, which is the local franchising authority's entire jurisdiction and there are no restrictions of the cable company incumbents venturing into the other operator's territory (upon the completion of their rebuilds) but both have represented to the local franchising authority that they have no intention of overbuilding one another. There are, in essence, no barriers of regulation to keep them from competing with one another.

It may take a few years of runaway price increases after the March 1999 deregulation of the cable industry before policy makers realize they made a mistake and not only look to re-regulate the industry but also break it up as it likely eventually will resemble the pre-1984 AT&T through mergers and clustering. The framework at the FCC allows incentive for the cable industry to grab every profit taking measure available to them under the law and who's to blame them for doing so?

**The Cable Industry: Cable Division Profits vs. the Overall Cash Flow of Company**

The cable industry spin to policy makers is that their profits and cash flow are low. But a closer examination shows that if any given company's cash flow and profits are low, it may be due to bad business practices in non-cable related ventures. An example of this is a recent issue of Cable World which reported that Time Warner had healthy profits in their cable division but their music division was bringing down their overall cash flow. Cable subscribers should not be forced to subsidize further price increases by the cable operator making poor investments in non-cable related matters. Policy makers should be very wary of cable industry representations that their company's cash flow or profits are low when all of the cable trade magazines and industry press releases consistently show cable division profits way up.

**Time Warner Rate Increases & Their Proprietary Properties**

When Time Warner increases its rates, it stands to reason that they should be charging less than other cable operators since so much of the yearly, (bi-yearly, tri-yearly) programming increases are the result of increases in the very popular programming property they own. Consider that Time Warner owns Cartoon Network, CNN, CNN Headline News, TNT, TBS, Turner Classic Movies, CNNSI, CNNFN, HBO, Cinemax, etc., and it causes one to ponder whether Time Warner is double-dipping its customers. The FCC should aggressively investigate to see if they are essentially charging twice over in their rate increases and implement appropriate action to cease this behavior.

**Cash for Carriage & the 20 Cents per Channel per Month Cable can Charge**

The cable trade publications have been running stories recently regarding the networks that pay a cable system to carry them. Network examples from stories appearing in *MultiChannel News* include HGTV (Home & Garden Television) Animal Planet, The Game Show Network and PAX-NET, to name but a few (see attached evidence). From a municipal standpoint there is a concern that this is revenue the cable operator has not counted toward gross revenues for the franchise fee purposes. More importantly, the FCC rules allow for cable operators to charge subscribers an additional 20 cents a month for each channel that is added on to their system. It is anyone's guess as to how many millions of dollars the cable operators were able to derive from these FCC rules when there are obviously circumstances in which the operator was already receiving compensation from the network for carriage. The Cable Agency would suggest that this is further evidence of the tremendous (and generous) latitude that is afforded to the cable industry by the FCC regarding rate charges to the consumer and that the issue be aggressively investigated.

**PEG Access in Indianapolis**

This annual assessment seeks information regarding PEG access channels, the number of channels being used and the types of programming included. In Indianapolis we have three access channels: 'P', features public safety programming and also serves as the spillover for the Educational Access Channel ('E'). The 'G' Channel, the Government Access Channel serves the community as a local version of C-SPAN. The 'P' channel features many law enforcement and public safety programs produced by both the government access facilities and the fire department. Some of the programs feature public safety awareness, documentaries, training, award ceremonies, and the like. There are also plans to carry the Indianapolis Public School (IPS) Board meetings on this channel, which has been widely endorsed in editorials in *The Indianapolis Star* newspaper. The 'E' channel features programming produced by the various city, township schools and colleges in Marion County. These also include a homework hotline and other live call in programs. The 'G' channel features many governmental meetings and allows public accessibility to them. These include the City-County Council, the Metropolitan Development Commission, four different Zoning Boards, Council Committee Meetings, Liquor Board, Air Pollution Board and Neighborhood Associations to name just a few. There are interactive bulletin boards on the same channel seen every six hours that inform the community on such topics as road work. There are live call in programs with elected officials, charitable organizations and a myriad of other topics.

**Comcast Launches Digital Services in Indianapolis/Cable Modem Service Mid 1999**

The annual assessment requests information regarding digital tiers by cable operators. On July 6th, Comcast of Indianapolis provided customers the option of renting a digital terminal thate are interactive bulletin boards on the same channel seen every six hours that inform the community on such topics as road work. There are live call in programs with elected officials, charitable organizations and a myriad of other topics.

Comcast Launches Digital Services in Indianapolis/Cable Modem Service Mid 1999

The annual assessment requests information regarding digital tiers by cable operators. On July 6th, Comcast of Indianapolis provided customers the option of renting a digital terminal that offers 24 screens of premium channels, 38 pay-per-view channels, 40 channels of uninterrupted music and an interactive on-screen guide. The digital terminal is available for an additional $9.95 per month. Not mentioned in their news release regarding this matter (see attached) but represented to our office by Comcast was the fact that if a customer alreadand Marion County).

Comcast also represented that they plan on launching cable modem service in this market by mid-1999. It is noteworthy that Comcast is one year ahead of their original rebuild plans (and those required under the franchise agreement) and they will be finished with their fiber optic upgrade by the end of 1998. The annual assessment was seeking these approximate launch dates of new services such as cable modem offerings.

**ESPN Should be Added to Migrated Product Tier**

With the increasing costs to ESPN, especially in light of a recently signed programming contract with the National Football League (NFL), we recommend that ESPN be offered on migrated product tiers on cable systems. This would provide a few benefits. First, it would allow a popular, albeit expensive, programming service to be grouped with other popular programming services which are treated as a la carte or premium services. Those who have no preference for sports in general would not have to be compelled in taking ESPN with their expanded basic or limited basic cable. Additionally, ESPN has stood the test of time as a popular cable programming service for CPST and therefore can stand alone in an a la carte setting and thrive there based on its previous success. The FCC sought comment regarding ESPN in this 1998 annual assessment.

**Exclusive Video Service Contracts in Multi Dwelling Units (MDUs)**

The annual assessment sought comment regarding the increase or decrease of exclusive video service contracts in multi dwelling units (MDUs). We would represent that this has been an on-going problem in our community. As long as private land owners and their landlords can receive compensation from the video service provider, then exclusive, non-competitive contracts will continue to be signed. From our perspective, where a SMATV (Satellite Master Antenna Television) has entered into a contract with the MDU landlord and is providing service, we have found that service to be far inferior to cable TV offerings from a technical, pricing, maintenance and programming standpoint. Invariably, customers with MDU SMATVs have to wait an inordinate amount of time to receive assistance on maintenance and reception problems. The MDU SMATV offers a limited amount of programming (25-40 channels) and the price is always reported higher to us than cable offerings in Marion County.

Representing the cable TV customers of Indianapolis and Marion County, we kindly ask that you give due consideration to the comments contained herein that are representative of the consumer feedback we have received.

Respectfully submitted,

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# Ameritech's Detroit-Area Push May Slow Rate Hikes

Continued from page 6

period. This happened despite ANM's entry into the Detroit market, where the video arm of Ameritech Corp., the state's dominant local-exchange carrier, has built a mega-cluster that passes more than 500,000 mostly high-demographic suburban homes.

"They've certainly cherry-picked," said Bill Black, spokesman for MediaOne, an area operator that raised its rates to an average of $27 per month in February. "They're concentrating on areas where you would expect a high penetration rate for premium services."

Ameritech is currently going head-to-head with the four major MSOs that control the local market, offering its cable service in 19 of 31 franchise areas at prices ranging from $22.95 to $28.95 per month.

It has left the metro Detroit area to Comcast Corp.'s Comcast Cablevision, and that operator's 125,000 urban customers are part of a statewide cluster of 500,000 subscribers.

Instead, ANM is concentrating on the suburbs, where it's competing against Comcast, MediaOne (340,000 subscribers), Tele-Communications Inc. (120,000) and Time Warner Cable (100,000).

But while ANM has managed to hold the line on prices — an ability that some observers attributed to its parent company's deep pockets — its competitors have not.

The largest increases were posted by TCI in Oakland County, Mich., where expanded basic rose by $8.68 per month between May 1996 and July 1997, or 34.4 percent, while the cost of a premium package jumped 24 percent, to $48.01.

Scott Sobel, TCI's regional director of communications, noted that rate hikes are a natural consequence of doing business, and that the MSO did not take the full increases allowable under the law.

Meanwhile, industry executives argued that the 1996 federal act promised competition, and not necessarily lower rates.

"If you look at the act, what it really did was open up all services to competition," Black said. "With that comes the need to aggressively invest in the network. I'm not sure that anybody who understands the economics of cable and the huge amounts needed to upgrade these networks ever really expected rates to come down."

## Average Cable Rates in Detroit Area
### (Excluding Ameritech)

| Expanded Basic | | | Premium | | |
|---|---|---|---|---|---|
| 4/96 | 7/97 | % Chg. | 4/96 | 7/97 | % Chg. |
| $23.40 | $26.05 | +11.3% | $37.27 | $40.09 | +7.6% |

Basic rates are for service delivered to a cable-ready television. Premium is basic, plus an addressable converter, Home Box Office and one additional outlet.

Source: *Detroit News* annual cable-rates survey.

Although MediaOne expects to complete upgrades in 45 Detroit communities by the end of 1999, don't expect an end to future price hikes.

"You may see less rapidly rising rates, but I don't think that anybody can hold the line forever," Black said.

Tom Bjorklund, a spokesman for Time Warner, which raised its rates by $2.62 per month Jan. 1 in four of five communities where it doesn't face competition, offered a more pragmatic view on why Detroit-area rates continue to climb.

"If you have two operators sharing customers in a town, ultimately, there's going to be pressure to raise rates in order to make up for those households that you no longer serve," he said.

**'CABLE SPEAK'**

Critics at Ameritech called both arguments "cable speak" — double-talk designed to cover up the fact that rates have stabilized, or actually come down, in those communities where competition has come on the scene.

For example, they claimed that in the suburbs where the company is not building a network, TCI's rates for expanded basic, not including equipment, average $32 per month. By comparison, they said the MSO charges between $23 and $28.95 for identical service in towns where ANM has entered the market.

In still other places, the MSO actually dropped its rates when Ameritech hit town, said Donna Garofano, ANM vice president of public affairs.

"Rates were very high until we started knocking on the door," Garofano said. "Do you think if we weren't competing with them that those rates would have come down?"

Industry observers pointed out that ANM has never revealed its subscriber numbers, which they speculated means that local governments that grant it a franchise will have trouble collecting on its promises.

"They always say, 'We'll give you 1 percent extra on gross revenues,'" said one cable executive. "One percent of what? They need customers first."

Nevertheless, there are indications that competition is being felt in area cable rates.

Comcast, for example, raised its rates in 27 of its 37 area communities earlier this month. Not included in those venues, however, were Clinton Township, St. Clair Shores and Sterling Heights — suburbs where ANM's network is up and running.

Meanwhile, in Fraser, Southgate and Garden City, increases of less than $2 per month left the MSO's rates $1.19 per month below ANM's price of $25.14 in each community.

"That proves my point," Garofano said. "We've helped to stabilize, if not drive down, rates."

In other locations, prices have actually been rolled back.

One such community is Troy, Mich., where TCI shaved $4.07 per month, or 15 percent, off the cost of expanded basic last year, while shifting Disney Channel to that tier. The two moves produced a savings of up to $14.52 per month for TCI customers.

In Lincoln Park, another Detroit suburb where ANM has launched service, TCI dropped expanded basic to $23.95, a reduction of $1.33 per month.

Even the threat of competition has been enough to prompt some cable operators to take steps to protect their customer base.

In the town of Royal Oak, one of six suburban communities that recently granted franchises to ANM, TCI is already offering coupons worth $10 per month off their local cable bills, said city manager Larry Doyle.

"And we're still just wiring the town," said Doyle, who expects even more action on prices as competition gets closer.

Sobel cited "competitive reasons" for not commenting on what rates will do in the future.

"We can't speak as to why other MSOs or Ameritech raise their rates, but we can say that TCI will make decisions based on keeping our customers happy first, at a fair price, considering the individual and local situation," he said.

Elsewhere, Comcast communities are enjoying "ComCash," another marketing plan that saves consumers $10 per month and that offsets Ameritech's controversial "AmeriChecks" plan. However, the Ameritech promotion — which offers $120 per year in vouchers good for any of the company's services — may be on the way out, as an administrative law judge has found that it discriminates against consumers who don't take the company's local telephone service.

Meanwhile, Ameritech has not been immune to selective price-cutting.

Earlier this year, it cut 10 percent, or $3 per month, off its rates in Sterling Heights — a demographically attractive community of 123,000 residents with a median family income of $42,000 per year.

Marketing experts speculated that Ameritech is struggling to differentiate itself from Comcast in Sterling Heights. The price cuts were presumably designed to increase the attractiveness of its product in a community where research indicates a desire for choice, and where 66 percent of the residents would consider switching for a comparably priced service. Until its price reduction, however, ANM's service was running about $1.04 per month higher than Comcast's service.

Sterling Heights is typical of many of the towns in the Detroit suburbs, Garofano said.

"They're white-collar and blue-collar communities, which are good markets because they buy a lot of cable television," she added.

Diane Dietz, Comcast's vice president of corporate affairs, warned that Ameritech's rates will remain low only as long as it takes to "buy market share." Moreover, she said the days of deep discounting on all sides may also be numbered.

"Nobody competes on price long-term," Dietz said. "With competition comes the need to invest in infrastructure, customer service and programming." MCN

# USSB, King Set PPV Fight Card

St. Paul, Minn. — U.S. Satellite Broadcasting and Don King Productions will open their exclusive pay-per-view boxing series with a junior-welterweight-championship fight.

The Dec. 13 event will feature International Boxing Federation junior-welterweight champion Vince Phillips against No. 1 contender Freddie Pendleton. The fight card — the first of at least four events in the next 14 months — will carry a suggested retail price of $14.95.

"We wanted to partner with USSB because of its unmatched ability to market and promote boxing and premium-movie networks," said Don King, president of Don King Productions, in a prepared statement. "The [Digital Satellite System] has contributed greatly to the growth of televised boxing in the past three years, and U.S. Satellite Broadcasting is the proven leader in the business."

Along with the telecasts, USSB will offer its subscribers daily boxing-news updates on its PPV service. MCN

# Is the Struggling EchoStar Lost in Space?

**EchoStar** *from page 1*

nancial squeeze until year's end with help from such prime vendors as satellite manufacturer Lockheed Martin Corp.

"We're not in the intensive care unit today," Ergen said. "I'm not going to run out of cash."

But EchoStar, which counts about 500,000 DBS subscribers, warned that it might do just that in its most recent quarterly financial filing with the Securities and Exchange Commission. "As a result of the failure by News [Corp.] to honor its obligations under the [merger] agreement," the company stated, "EchoStar does not currently have adequate capital to continue its contemplated business plan beyond the second quarter of 1997."

What's more, EchoStar will dramatically boost its short-term losses next month when it begins to market its latest satellite receiver offer to consumers. Reigniting last year's price wars with DirecTv, EchoStar will pitch dishes for $199 without the annual upfront programming commitments it has been requiring for almost a year.

EchoStar posted first-quarter revenues of $72 million — up 74% from the previous year due to an increase in Dish Network subscribers. Cash flow totaled a negative $3.8 million vs. a year-ago, same-period negative cash flow of $5.3 million. Latest-quarter net losses totaled $62.9 million vs. $7.2 million.

EchoStar mainly tied that wider loss to increased depreciation and amortization costs from the company's two high-powered DBS satellites; higher expenses stemming from the continued accretion of the company's debt load issued in 1994 and 1996; marketing costs; and subscriber-promotion subsidies.

As a result of the new promotion, EchoStar expects each new subscriber to cost it $200 to $275 to acquire, according to the company's SEC filing. If the company can double its subscriber base to 1 million by year's end, that could mean additional subsidies of $100 million to $138 million.

"The money upfront is a cash-flow issue," said Steve Blum, the president of the Carmel Group, a DBS financial advisory firm. "But cash-flow problems are solvable if you've got everything else working for you."

Ergen positioned the promotion as key to his effort to reach 1 million subscribers "as fast as we can." At that point, he said, "we'll have our head above water."

In the meantime, Ergen said EchoStar will go back to its bankers, investors and equipment suppliers for financial help. With its long-term debt-service payments rising and another $136.2 million committed to its suppliers through the rest of the year, the company said it's already talking to Lockheed Martin and other major vendors about deferred payments and debt financing.

"I think we'll receive a lot of support from our vendors," Ergen said.

EchoStar also will seek more Wall Street help: Ergen said the company, which will try to suspend or defer debt payments to its lenders, already has begun to talk to investment bankers about raising fresh capital.

But that may be a tricky proposition: In one sign of Wall Street's skepticism about EchoStar's prospects, Moody's Investors Service last week shifted its review of $1.2 billion worth of EchoStar long-term debt from a possible upgrade to a possible downgrade.

"The change in direction reflects

*See* **EchoStar** *on page 47*

# Ameritech to FCC: Please Settle Squabbles More Quickly

**Ameritech** *from page 1*

New Media.

Ameritech, which says its franchises in the Midwest cover an area counting 1.7 million people, has declined to say how many video subscribers it's serving.

In its petition, the telco is asking that FCC complaints be resolved within 60 days of the closing of the comment period. "We'd be happy with 90 days," said Richard Notebaert, the Baby Bell's chairman. "You have to start somewhere."

The FCC couldn't be reached for comment late last week.

Ameritech already has resolved several program-access issues, including a skirmish with MediaOne — then Continental Cablevision — over an exclusive distribution deal the MSO signed with HBO in Michigan. Ameritech still has a complaint outstanding against Cablevision Systems Corp. and SportsChannel, which signed an exclusive deal for distribution in Ohio.

"A lot of these exclusive deals apply only to telco wireline competitors, not DBS," Lenart said. "That's a disturbing trend."

Ameritech also said that some incumbents, such as Cablevision and Comcast, are skirting federal regulations by not transmitting programming over satellite and opting for wire line systems. "If we're going to have competition in cable, we should have open access to anything that goes over the air," Notebaert said.

americast, the telco programming venture backed by Ameritech, BellSouth, GTE, SBC Communications Inc., Southern New England Telecommunications and Walt Disney Co., is channeling most of its resources into developing a navigator. The company also plans to produce some original content.

When that happens, the group won't restrict access by incumbent operators, according to Lenart, an americast board member. "We won't compete by restricting content," she said.

As for penalties against cable operators who sign restrictive deals, the Baby Bell said it won't ask for specific fines. But it does want to give incumbent operators an incentive not to negotiate contracts knowing that they could offer exclusive programming while access complaints are resolved.

Ameritech cited MSNBC, TV Land, Eye on People, Fox News Channel and FX for signing exclusive cable deals.

"There's no downstroke during that time, so they just withhold the programming," Notebaert said. "Things shouldn't be moving that slow."

Ameritech says it's generating 28% penetration rates where americast programming is available. The telco says 80% of its subscribers are taking its advanced analog set-top. Monthly revenue per subscriber is $34, Ameritech said.

Cable companies are dropping rates when Ameritech comes to town, the telco said, claiming that Time Warner has dropped basic rates $2, Jones Intercable $4 and TCI and Continental $5 in competitive markets. CW

## COLUMBUS

*Continued from page 6A*

permarket and the movie tickets — help too. So does the free installation. And the consolidation of her cable bill with her phone bill. Not to mention that her total bill for expanded basic and premium service will be $5 cheaper than what she pays Time Warner.

"It's a more attractive offer," she says. Case closed. Add another new subscriber to Ameritech; subtract one from Time Warner.

Cooper was hardly alone. Shawn and Sherri Prim, a young couple with a baby, switched because Ameritech offers a lower monthly rate and charges $1 less for pay-per-view movies, and because

Time Warner "raised rates on a consistent basis," they said.

Mike and Lisa Williams — he works in marketing, she's in customer service — said their cable "kept going out" and Time Warner's customer service was "horrible."

Ann DiGeorge said Time Warner "did things they wouldn't explain" — like install a converter box and add it to her monthly bill. "They could do it," she explained indignantly, "because they were the only ones."

That changed two years ago, when the Ameritech Corp. unit began overbuilding Time Warner and Coaxial in Columbus and its outlying suburbs.

The huge regional Bell operating company has, of course, been the biggest booster of the video business among the Baby Bells.

Over the last two years, it has gained 75 franchises to overbuild a number of the cable industry's biggest operators in Ohio, Michigan and Illinois. To date, Ameritech is selling Americast cable in 54 municipalities, and is negotiating with two dozen more.

But the quintessentially middle-class Columbus market, with a metro-area population of nearly 1.5 million and a national reputation as an ideal test market, has been Ameritech's most ambitious cable venture by far.

The phone company has spent untold millions relentlessly installing state-of-the-art, 750-Megahertz hybrid fiber-coaxial cable in neighborhood after neighborhood.

But for a city famous for being ordinary, Columbus has more than its share of mysteries when it comes to cable competition.

Time Warner's people say they wonder why Ameritech chose Columbus as its big showcase in the first place, because local customers have been so well served by the incumbent, which itself has traditionally used Columbus as a showcase market for state-of-the-art products, dating back to the Qube interactive test 20 years ago.

Of the cable customers queried at lunchtime at Columbus' busy downtown City Center mall, however, few expressed great loyalty to either Time Warner or Coaxial.

Tim Stanton, a middle-aged information specialist wearing a white shirt and tie who was eating a sandwich on his lunch break, was typical. He's a Time Warner customer, but said he would switch to Ameritech if he got a better price.

"If I could get in cheaper," he declared, "that's where I'd go."

But there hasn't been a price war in Columbus.

All three cable companies offer about 60 expanded basic channels (out of a total of over 100 including premium and pay-per-view) for around $27, and each has made it clear they don't want to resort to slashing monthly expanded-basic subscription prices.

Beyond that, however, things get tricky. Ameritech charges $2.95 for PPV movies, $1 less than Time Warner and Coaxial. To gain market share, Ameritech has also used aggressive discount and incentive promotions that its competitors claim have been tantamount to price-cutting.

Early on, for example, the phone company blitzed the market with its controversial "AmeriChecks" promotion, offering new customers coupons for discounts on a variety of the company's services, including their local telephone bill.

The Ohio Cable Telecommunications Association objected, however, and last summer the Public Utilities Commission of Ohio ruled that the marketing program was illegal under state and federal laws. The PUC said the AmeriChecks illegally cross-subsidized business interests using revenues derived from monopoly telephone customers.

(The commission previously had also found Ameritech guilty of illegally giving its cable division favorable treatment in stringing cable wires on utility poles.)

While the company halted its AmeriChecks program, Ameritech still employs a number of other promotions such as offering pre-paid long-distance phone cards to new customers, movie tickets and grocery coupons.

Most new Americast subscribers also get free installation and first month of service, in addition to several more free months during the course of the year as an incentive to remain with Ameritech.

The cable companies have been forced to respond in kind.

Time Warner and Coaxial will usually match, or beat, an Ameritech offer to one of their existing customers who is considering switching. Time Warner, with the help of an outside consulting firm, started a retention-oriented loyalty program called "The President's Club," offering customers gifts and discounts as incentives to stay put.

Both incumbent cable companies are also aggressively pursuing customers who have left, tempting them with a number of juicy discounts and incentives to return to the fold. This past Christmas, as part of what Time Warner calls its "regain efforts," it sent former subscribers a personalized Christmas card offering free installation if they came back.

Coaxial, said Greg Graff, the company's senior vice president of marketing, programming and advertising, is employing a direct sales force to target and win back former customers with "aggressive offers."

And once Coaxial gets customers back, Graff believes, the switching phenomenon that has worked so well for Ameritech to date will ultimately begin to work against the phone company.

"People won't keep switching," he predicted. "It's not as painless as long-distance. Once we get them back, it will be much more difficult for Ameritech to get them to switch again."

Mark Psigoda, vice president of sales and marketing for Time Warner, also boasts that lost customers are "relatively easy to get back [from Ameritech]."

One of the company's recent "recapture" direct-mail pieces, he said, resulted in 4.5 percent of the targeted cable customers returning to Time Warner, an unusually high percentage for such an effort.

### WHO'S WINNING?

The whole topic of winning and losing customers brings up one of the biggest mysteries of cable television in the Columbus market: How are the three competing companies really dividing up the customers?

Ameritech won't reveal how many subscribers it has or how many homes its cable wires pass, but Time Warner estimates the phone company has, at this point, overbuilt about 75 percent of its 352,000 homes passed.

John Gibson, vice president of sales and service for Ameritech New Media, said the phone company's video division is "ahead of its business plan" and that one out of three homes "will give us a try."

Carol Caruso, executive vice president of the Ohio Cable Telecommunications Association, estimates that based on rate filings with local municipalities, Ameritech may have about 48,000 customers, which would give it a penetration rate of approximately 23 percent. Caruso cautioned that the estimate is very rough; Time Warner officials put Ameritech's take rate at less than 10 percent.

Coaxial claims over 91,000 subscribers, and Time Warner says it has slightly under 200,000 customers, approximately the same as it had when Ameritech entered the market in 1996. So far this year, Psigoda claimed, the company is "on track to meet its historical growth rate of 4-to-5 percent" annually.

While subscriber count — and the amount of churn — may be cause for head-scratching, the unique competitive situation in Columbus has shown that no matter how many customers Ameritech has, its presence in the market has definitely had a financial impact on the incumbent cable companies.

Time Warner and Coaxial have not raised rates in over a year, and executives from both companies say their marketing budgets have increased while their cash flow has suffered.

Ameritech's brand recognition has also proven to be a powerful marketing tool. "They have great brand identification," said Mary Jo Greene, Time Warner's vice president of public affairs. "Every time you see that logo it helps them."

(Well, maybe not every time. Ameritech squandered some good will in the process of digging up homeowners' lawns to lay its wire. One float in a suburban Fourth of July parade last year mocked the company's "Your Link to Better Communications" tag line by displaying shovels and a banner reading, "We Cut Your Link to Better Communications."

Despite the negatives for the incumbents, the competition has generated some good news for cable companies: All the attention on cable in the market appears to have slowed defections to direct-broadcast satellite services. Coaxial's Graff said he's seen noticeably less DBS marketing effort in the area. After going head-to-head with Ameritech, he said, competing with DBS is "like batting practice."

### WHAT DRIVES CUSTOMERS?

While it's clear that consumers very much like having a choice of cable companies in the marketplace, it's unclear exactly what motivates their buying decisions beyond price and a desire for uninterrupted service.

Ameritech executives' party line is that cable customers want added-value in the form of better service, and a differentiated product in the form of programming and features on its remote control and interactive program guide.

But few Columbus residents brought up any of these points in dozens of interviews over several days, although many had long memories about cable service interruptions.

Significantly, the competing companies have crowed about programming exclusivity: Time Warner and Coaxial both carry a new local sports network, Central Ohio Sports, as well as Cleveland Indians games on local broadcaster WUAB. Ameritech, meanwhile, carries several networks such as Classic Sports that the cable companies don't.

The two cable companies also offer high-speed Internet service via cable modems (Time Warner's Road Runner and Coaxial's Express) while Ameritech New Media does not. (Ameritech New Media's parent company offers traditional Internet access services.)

David Kandel, market manager for Ameritech New Media in Columbus, said the company was weighing a decision between cable modems and ADSL (asynchronous digital sub-

*Continued on page 32A*

# Cities Hoping Ameritech Will Stay in Video

*But SBC's Whitacre gives a less-than-ringing endorsement on Capitol Hill*

BY. K.C. NEEL

If SBC Communications Inc. chairman Edward Whitacre knows what he's going to do with Ameritech's fledgling cable business in the Midwest, he's not telling anyone.

Whitacre promised the U.S. Senate Antitrust Subcommittee last week that he'll give the cable operations "a fair look" but stopped short of saying he'll continue to operate the overbuild systems currently serving some 100,000 customers.

City administrators in areas where Ameritech currently offers cable service were hopeful last week that SBC will continue to operate the systems, but many industry observers were skeptical.

"There are a lot of cities that have now glimpsed the promised land of competition," said University of Wisconsin professor and city consultant Barry Orton. "But, like Moses, they'll never get a chance to really see it" if SBC shuts down Ameritech's cable division.

"My gut tells me that SBC will get out of the cable business. They could either write the operations off since they are only a small fraction of the whole merged entity, or they could sell them."

But he added: "Those properties are really only valuable to Ameritech because they also offer phone service to the same clientele. I don't think [the systems] will be very valuable to anyone else, especially in the smaller markets where Ameritech has concentrated much of its activity."

At this point, many city officials would rather not think about the possibility of Ameritech closing its cable doors.

"I don't think many cities have given [it] much thought at this point," said Stuart Chapman of Municipal Services Associates, a Hoffman Estates, Ill.-based city consulting firm. "I think it will become a sizable issue with cities later this summer as they gather at municipal meetings."

Indeed, many city officials last week said they were taking a wait-and-see approach with the merger.

"Whatever happens with Ameritech New Media — if anything happens at all — won't happen for a while," said Naperville, Ill., city attorney Mike Roth. "We're happy with Ameritech's cable service here and we would be disappointed if we didn't have competition, but it's only conjecture at this point to wonder what will happen [after the merger]. I'd be surprised if there's been any corporate decisions made yet.

"With 50 operating franchises out of 73 and over 100,000 cable customers, it won't be easy for SBC to walk away. But I think city administrators need to ask Ameritech, 'What's your future?' now and talk to California cities that were affected by the merger there last year."

Of course, most cities don't have much recourse if Ameritech's cable operations go dark. In Naperville, for example, Roth said the city's franchise agreement with Ameritech — as well as its pact with incumbent Jones Intercable Inc. — stipulates that the city only has the authority to OK a franchise transfer. That is, if Ameritech wants to shut down service altogether, the city can't prevent that.

If Ameritech can't find a seller and/or decides to shut down cable operations in Naperville, Roth said the city may explore the idea of taking over the business and *running* it as a municipal overbuild. But, he noted, "It'd be unfair to assume Ameritech won't continue to be around as a local cable operator. I think it's going to be at least 18 months before the merger even closes."

After earning a reputation as the most bullish regional Bell operating company about the cable business in the early 1990s — SBC predecessor Southwestern Bell paid a record $650 million for Hauser Communciations' suburban Washington, D.C., cable operations in 1993 — the telco's taste for cable quickly soured.

SBC gave up operating control of the Washington systems a few years later and finally sold them to Prime Cable earlier this year. It also scuttled an in-market video trial last year in Richardson, Texas, and garroted Pacific Telesis' video plans in California when the two telephone giants merged last year.

See **Video** on page 77

# BellSouth Offering Internet Access in the Southeast

**Southeast** *from page 1*

Lauderdale, Fla.

It plans to extend service to another 23 markets in its nine-state region over the first half of next year.

The aggressive ADSL move by BellSouth follows similarly ambitious announcements by such other regional Bells as GTE Corp. and U S West Communications Group. It also comes as cable operators step up their rollout of high-speed cable modems, now in more than 200,000 North American cable homes and growing by several thousand customers a week.

Indeed, in several of BellSouth's initial target markets, MSOs have been offering high-speed data service for months, if not longer. MediaOne, for instance, has introduced service in Atlanta, Jacksonville and Ft. Lauderdale.

BellSouth also will compete with GTE in at least one market, according to the two companies' timetables. Like BellSouth, GTE plans to introduce ADSL service in the Raleigh area.

But BellSouth executives insisted last week that they're following their own timetable, not simply responding to others' competitive thrusts. They said the driving forces are market size, customer demand and the condition of their copper plant.

"Obviously, we're watching cable modem deployments very closely," said a BellSouth spokesman. But he argued that they're not the main concern.

Unlike GTE, which is marketing five different service packages, BellSouth aims to offer one standard ADSL package to residential and small business customers.

BELLSOUTH

**BellSouth executives said**

they're following their own timetable, not simply responding to competitive thrusts.

The BellSouth.net FastAccess service will cost subscribers either $49.95 or $59.95 a month, depending on their level of phone service. One-time charges include $199.95 for equipment and $99.95 for installation.

"We wanted to launch with one simple plan for consumers and small businesses," the spokesman said.

But he said the regional Bell operating company also will offer quicker data service with more features to larger business customers. The company hopes to roll out that service in August, too.

Along with the other Baby Bells, BellSouth is participating in a telco-computer industry consortium developing "Universal ADSL," or "ADSL Lite," service for copper phone lines. The group is now developing technical standards for the simplified ADSL service, which would eliminate the costly, time-consuming need for a splitter to be installed in each customer's home.

The BellSouth spokesman said his company remains committed to "a splitter-less" ADSL service. But with the deployment of ADSL Lite still considered at least a year away, BellSouth, like GTE and U S West, feels it can't afford to wait any longer.

BellSouth, which has about 235,000 dial-up Internet customers in 43 southeastern markets, declined to project how many ADSL customers it expects to sign up initially. The spokesman said several hundred customers sought to register for the service on the BellSouth.net Web site last week. CW

# Several Cities Hoping Ameritech Will Stay in Video Business

**Video** *from page 8*

Whitacre has admitted that an overbuild strategy may be a better way to go than buying cable systems. But when it merged with PacTel last year, SBC showed no inclination toward an overbuild when it shuttered PacTel's 8,000-subscriber overbuild operations in San Jose, Calif. Indeed, city officials in San Jose were caught completely off guard about the closure: Two days before the shutdown, PacTel executives were outlining the telco's overbuild strategy going out two years.

In addition to its takeover of PacTel and Southern New England Telephone Co. last year and its current intention to take over Ameritech this, San Antonio, Texas-based SBC once initiated merger talks with AT&T Corp. Those discussions ran aground, but not after some industry observers worried that an SBC-AT&T merger would supplant the 1984 breakup of AT&T. That breakup led to the formation of seven regional Bell operating companies that concentrated on the local phone business while AT&T was left with long distance and manufacturing operations.

## Bigger is better

Last week, Whitacre argued in front of the Senate panel that bigger is better and defended the merger by saying it would foster competition and expand jobs and innovation. Some Congressmen were skeptical and the Consumer Federation of America is hoping the U.S. Department of Justice will extinguish SBC's lust for expansion.

"We are a big company today," Whitacre said, "but inevitably we need the added size and scope this merger brings. The combined company — the new SBC — will have the assets, scope, scale and personnel to compete on a local, national and international basis."

He also predicted in the future that there'll only be a handful of global telecommunications companies — AT&T, BT, Deutsche Telekom, France Telecom and Nippon Telephone and Telegraph — offering a litany of services on a worldwide basis.

But some Senators last week weren't buying it.

"Few of us ever believed we would see a telephone landscape that is beginning to look like the old Ma Bell," said Sen. Herb Kohl (D-Wis.), the subcommittee's ranking Democrat.

At the same time, Michael DeWine (R-Ohio) wondered aloud whether the merger would spur similar matchups and urged Whitacre to commit to continuing operating Ameritech's cable operations: "[Ameritech's] cable plan looks real good. I like what I see on the surface ... Can I tell what we would do? I cannot." CW

# Less competition for cable television

**BY RICK MAULTRA**

The acquisition of Ameritech by SBC Communications is likely to be anti-competitive in the area of cable television and is contrary to the intent of Capitol Hill in 1996 when it enacted the Telecommunications Act.

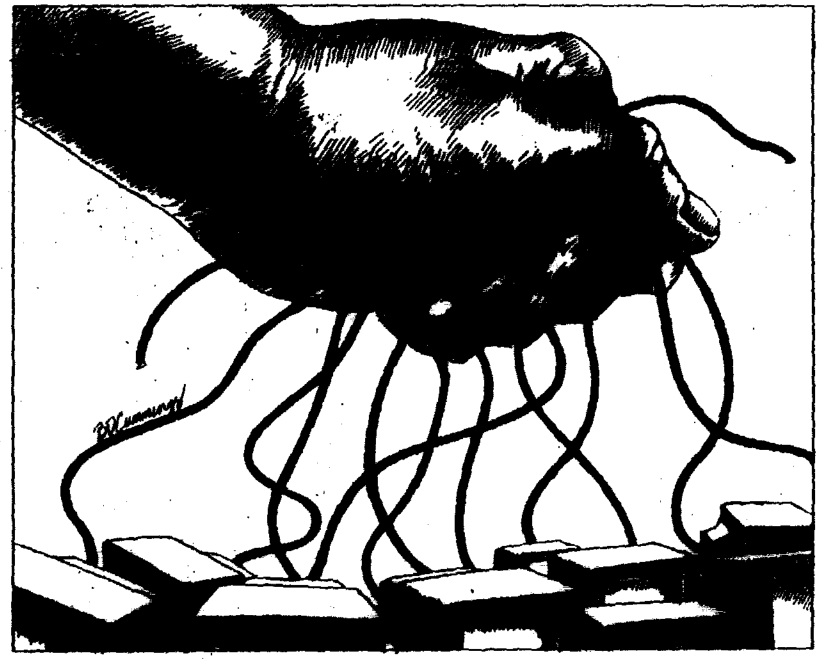
SBC Communications has a history of staying away from the business of cable television and disposing of the cable properties it has acquired along the way that were a result of mergers or otherwise.

Consider that the current definitive model providing competition to incumbent cable television operators is Ameritech in the form of cable TV overbuilds. An overbuild means there is a new cable television operator competing with an established operator in the same geographic region.

In markets of the Midwest, Ameritech has gone head to head with Time Warner, Comcast and other cable companies and their systems. This includes suburbs of Detroit, Columbus, Ohio, and Chicago. In these communities and many more, prices have either gone down or stabiliz . Services have become more competitive in terms of free premium channels or free months of cable for signing up.

The cable operators know that Ameritech's model of competition most resembles their own and they must match it. The cable TV trade publications make note that the cable industry is licking its chops at the potential removal of its biggest competitor, Ameritech, if this merger is approved.

Knowing that SBC has divested itself of video market holdings, the Senate Judiciary subcommittee on antitrust, business rights and competition is now questioning SBC Chairman Edward Whiteacre about plans regarding Ameritech's 50-plus cable TV franchise operations in the Midwest.



Los Angeles Times Syndicate

## LETTER SPOTLIGHT

Whiteacre has been non-committal on this issue, furthering the speculation that franchised cable TV competition, whether real or possible, in the Midwest will come to an end upon the consummation of this merger.

There has been much speculation over the years as to whether cable overbuilds can be a profitable venture since there is a great deal of initial capital investment involved. Ameritech claims it is achieving a 36 percent average market share and as high as 50 to 60 percent in some markets. If that is true, and there is no reason to doubt it as it continues to aggressively acquire more cable TV franchises in more markets, then it will expose the cable TV industry to competition that has not occurred before.

If another cable television company is to come to the Marion County marketplace, and thus allow a choice between cable companies, that company will more than likely be Ameritech. If SBC Communications' merger with Ameritech is approved, Ameritech's expansion of its cable TV franchising will be very doubtful. Thus, the merger likely will remove the best potential competitor to date to incumbent cable operators.

*Maultra is director of the city of Indianapolis Cable Communications Agency.*

Indpls Star 6/12/98

# Merger Sparks Skepticism, Antitrust Concerns

*Lawmakers concerned about SBC-Ameritech marriage; FCC mails survey*

BY ERIC GLICK

The fallout inside the Beltway over SBC Communications Inc.'s bid to buy Ameritech Corp. began in earnest last week, starting with a hearing on Capitol Hill.

Edward Whitacre, SBC's chairman-CEO, testified before the U.S. Senate Antitrust Subcommittee that the merger wouldn't only benefit consumers, but would make the new telco a global player in the telecom market. At the same time, however, he indicated that he may pull back on Ameritech's aggressive cable strategy.

Senators on the subcommittee and at least one consumer activist were wary about the merger's potential antitrust effects, however.

Saying Congress should "crack the whip on weak antitrust" rules, Gene Kimmelman, co-director of the Consumers Union's Washington, D.C., office, said the new company will be "incapable" of reaching the competitive goals Congress sought by passing the Telecommunications Act of 1996.

On the cable front, Kimmelman said telcos' promises to compete with MSOs have come up short: "After years of clamoring to offer competition to the cable industry, the local telephone companies ... have done more backtracking than competing against cable."

## No promises

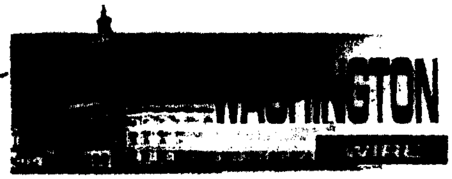
Indeed, Whitacre made no promises at the hearing that, as chairman of the new mega-telco, he would continue Ameritech's aggressive cable overbuild policy. The Baby Bell has some 60 cable franchises throughout the Midwest.

Whitacre told subcommittee chairman Mike DeWine (R-Ohio) only that he would give Ameritech's overbuilds "a fair look." SBC recently sold its Washington, D.C.-area systems to Prime Cable and shut down a video trial in Richardson, Texas.

Whitacre said the merger is necessary because "ultimately there will be a limited number of integrated global com- multitude of regional, national and local companies."

Whitacre also contradicted Kimmelman, saying the deal "will bring on the types of real competition, real choice and real consumer benefits that Congress envisioned in the 1996 act."

But lawmakers didn't seem convinced by Whitacre's testimony.



U.S. Sen. Herb Kohl (D-Wis.), the ranking minority member on the subcommittee, said, the "telephone landscape ... is beginning to look like the old Ma Bell," referring to the monopoly provider AT&T before its 1984 breakup into seven regional Bell operating companies.

Kohl also said the SBC-Ameritech merger "presents us with the promise of competition tomorrow, but the reality of consolidation today."

Sen. Patrick Leahy (D-Vt.) also voiced his concern over the proposal, saying, "Before all the pieces of Ma Bell are put together again, Congress should revisit the telecommunications act."

## National basis

Still, Whitacre promised a competitive environment under the new SBC, which he said would be "the first company to serve both residential and business customers on a national basis."

He said customers outside SBC's new territory "will benefit from the increased competition that will result from our entry into markets."

Bringing an investor's perspective to the telephone industry's recent consolidations, Scott Cleland, managing director of the Precursor Group — a subsidiary of Legg Mason Wood Walker Inc. — said, "What is happening is a massive clash of financial reality with flawed public policy and unrealistic expectations.

"Money goes where it is welcome, not where regulators tell it to go."

Cleland claimed that the recent mergers between SBC and Pacific Bell and Nynex and Bell Atlantic Corp. went through because "it is simply what's best

**QUESTIONS FOR CABLE:** Several cable operators will be busy filling out paperwork over the next couple of weeks.

The **FCC** recently mailed some MSOs a two-page questionnaire asking for details on programming costs.

The commission is asking cable operators a number of very detailed and, according to some observers, proprietary questions in its price survey released May 15.

Here's a sample of the questions in the survey:

- How much do subscribers pay on average for a basic tier subscription, including remote and converter box?
- How much of any rate increases are attributable strictly to increased programming costs?
- How much of any increases can be attributed to adding channels to a system?
- For costs associated with channel increases and other programming, what portion of that is attributable to the following: license fees; retransmission consent and copyright fees; the going-forward rules?
- Calculate the dollar amount of programming costs and channel addition costs associated with sports, news and children's programming.
- How much of rate increases are attributable to upgrades, and were those upgrades part of a franchise agreement?
- What percentage of revenues are attributable to advertising, commissions or launch and marketing fees?

FCC chairman **William Kennard** launched the inquiry in January, saying cable rates were escalating beyond standard inflationary measures. Indeed, according to the **Bureau of Labor Statistics**, cable rates rose 0.3% in April.

Meanwhile, the general **Consumer Price Index** rose 0.2% in April, the bureau said. Overall, cable rates rose 7.6% over the last 12 months, while the general CPI rose 1.4%, according to the bureau's figures.

It's unclear what the commission will do with the data once it receives the forms back from MSOs.

Kennard recently indicated in an interview with *The Washington Post* that he's disinclined to impose a rate freeze or other disciplinary action on the cable

# DeWine Presses Whitacre on Cable

~~By TED HEARN~~

WASHINGTON — Sen. Mike DeWine (R-Ohio) last week pressed SBC Communications Inc. chairman and CEO Edward Whitacre Jr. to continue Ameritech Corp.'s push into cable television after the consummation of the two telcos' $62 billion, all-stock merger.

"We want to encourage that. We want to see that expand," said DeWine, chairman of the Senate Judiciary Subcommittee on Antitrust, Business Rights and Competition.

Whitacre, while praising Ameritech's efforts, declined to make any promises.

"I like what I see on the surface. I think that they've done a nice job with it," he said. "Can I tell you what we would do? I cannot, because we've haven't completed this merger. Would we give it a fair look? Absolutely. I like their concept."

WHITACRE

To date, Ameritech's cable arm, Ameritech New Media, has signed up about 100,000 subscribers in 50 communities in Ohio, Michigan, Illinois and Wisconsin.

DeWine said Ameritech's entry into cable has kept prices steady in various Ohio markets, while cable retail prices continued to rise where no overbuild competition existed.

"Ameritech has, in limited areas, provided meaningful competition to established cable operators," DeWine said. "The net result is what you would expect from competition: There has been more stability in prices."

Whitacre appeared before DeWine's subcommittee May 19 to defend SBC's acquisition of Ameritech, the one Baby Bell that has moved decisively into cable. He said SBC needs the deal to become

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# DeWine Presses Whitacre on Cable

**Continued from page 3**

a global player and to launch competitive local-exchange service in 30 markets outside of its post-merger 13-state territory, including its $4.4 billion stock deal for Southern New England Telecommunications Corp.

"We are not large enough — as off-the-wall as that sounds — to pull this off," Whitacre said.

DeWine sought Whitacre's assurance that SBC would not force Ameritech to back away from cable, reminding Whitacre that SBC has shown little enthusiasm for the video business after a few trials.

At one point in his testimony, Whitacre told DeWine's panel that SBC was looking to unload the Los Angeles wireless cable system that it inherited in its acquisition of Pacific Telesis ~~Group.~~

"We're trying to [sell it]. We've haven't yet ... It is not a viable competitor," he said.

The 100-plus-channel digital system began operating last May, and it has signed up approximately 20,000 subscribers.

DeWine was understandably nervous because SBC halted a video trial in Richardson, Texas, and scrubbed a cable system in San Jose, Calif., ~~after buying~~ PacTel. And the telco sold its out-of-region cable systems in suburban Washington, D.C., to a group headed by Prime Cable. Whitacre indicated that he might be patient with Ameritech's cable investment because Ameritech's in-region approach was different from SBC's decision to buy systems outside of its current seven-state region.

"Ameritech has done it differently: They have done it in their region. They have done it in an overbuild situation — an entirely different concept than what SBC has tried," Whitacre said.

Ameritech chairman and CEO Richard Notebaert said last week after a speech at the American Enterprise Institute here that he was confident that Whitacre would be pleased with the company's cable results.

"My prediction is that he will do exactly what I do every day," Notebaert said. "I look at how we are doing, I look at our 37 percent market share, I look at our return and I say, 'Are we on plan, and how are we doing?' Right now, we are doing great."

Whitacre was not asked about his plans for SNET's cable overbuild of Cablevision Systems Corp. in parts of Connecticut.

"What we expect is that they will look at our cable business with the same scrutiny that we have been applying," SNET spokeswoman Beverly Levy said.

Meanwhile, Ameritech keeps on snaring franchises. Last week, Woodhaven, Mich., awarded the telco its 73rd franchise — 34 of them in Michigan — to compete against Tele-Communications Inc. The town, located about 10 miles south of Detroit, has a population of around 12,000, residing in 4,300 homes.

Ameritech has its work cut out in Woodhaven: TCI recently launched a digital tier of 160 video and 45 audio channels in the area.

In a related matter, Ameritech executives last week continued to participate in briefings with city administrators in Chicago, where it anticipates overbuilding TCI on the South Side.

Ameritech's proposal is on the city Board of Aldermen's agenda for June 10. MCN

5/25/98

# Ops Await SBC/Ameritech Fallout

By KENT GIBBONS

Once again, cable operators are wondering what will happen to one of their toughest competitors now that it is being consumed by SBC Communications Inc.

MSOs have reason to hope that SBC's proposed acquisition of Ameritech Corp. — valued at $62 billion when it was announced last Monday — will at least slow Ameritech's Midwestern cable onslaught.

In two years, the regional Bell operating company's cable arm, Ameritech New Media, has racked up more than 100,000 subscribers, pursuing an overbuild strategy that has left industry analysts scratching their heads over the economics and wondering what Ameritech chairman Richard Notebaert saw that they couldn't.

SBC, meanwhile, scrapped Pacific Telesis Group's nascent cable efforts after it bought that RBOC last April. SBC went ahead with the launch of PacTel's digital wireless cable system in Los Angeles, but it has since been negotiating to sell it to Prime Cable.

SBC also abandoned its own domestic cable operations, agreeing last fall to sell systems in the

See OPS, page 61

**CEO FACEOFF:** SBC Communications Inc. chairman and CEO Edward E. Whitacre Jr. (left) and his Ameritech Corp. counterpart, Richard C. Notebaert, discussed their "national-local" strategy at last Monday's press conference in Chicago.

# SBC Countersues Over Americast

By RITA FARRELL

WILMINGTON, DEL. — Talk about awkward: Last Wednesday, SBC Communications Inc. sued two of its proposed merger partners — Ameritech Corp. and Southern New England Telecommunications Corp. — over a partnership dispute that began a year ago.

It all began when SBC decided to bow out of the Americast cable venture that it had joined in 1995. In addition to SBC, Ameritech and SNET, the partnership also included The Walt Disney Co., BellSouth Corp. and GTE Corp., all of which agreed to stay in for five years.

After its merger with Pacific Telesis Group, SBC decided that its focus laid elsewhere, and it claimed that an escape clause in the partnership contract allowed it to withdraw with impunity. The partners thought otherwise, and they successfully sued to have the dispute arbitrated, winning a decision by an arbitration panel last month that could cost SBC as much as $500 million in damages by 2002.

So SBC sued the partners last week in Delaware Chancery Court here, just one week after announcing its $62 billion merger proposal with Ameritech and before completing its merger with SNET. The actual parties in the lawsuit are subsidiaries of the parent companies.

SBC alleged that the arbitration panel exceeded its legal limits and violated state and federal law by entering judgment against SBC for withdrawing from the partnership in May 1997.

The arbitration panel not only found that the SBC subsidiary, SBC Interactive, "had not validly withdrawn from the partnership," but it also ruled that the jilted partners could collect damages sometime down the road.

In its lawsuit, SBC complained that the panel ordered it to pay actual damages, "despite having found that the defendants had proven no damages."

SBC spokesman Brian Rosnanski said the lawsuit "has no negative impact on our relations with Ameritech or SNET. Our merger with Pacific Telesis changed our focus and represented a material change in our strategic direction. And, as a result, SBC decided that it was no longer necessary to own, operate or manage video networks or to create its own programming, which was one of the principal purposes of Americast. We're still committed to offering home-entertainment services, but through other methods."

As one example, Rosnanski said, SBC signed an agreement with DirecTv Inc. and U.S. Satellite Broadcasting regarding direct-broadcast satellite subscribers in apartment complexes.

SBC has asked the Chancery Court for an injunction to block enforcement of the damages award, and for an order vacating or revoking the arbitration panel's viewing.

In a related action, on June 23, the Delaware Supreme Court will hear SBC's appeal of Vice Chancellor Jack Jacobs' December decision that ordered SBC to submit to arbitration in the first place. Jacobs rejected SBC's claim that its withdrawal from Americast was not subject to the arbitration provision of the partnership agreement. MCN

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Cable World

The News Magazine for Video, Voice and Data

# SBC Reorders Telco Universe

*Ops hope Ameritech will shelve video expansion*

BY CABLE WORLD STAFF

Several large cable operators cheered last week when SBC Communications Inc. announced plans to buy fellow Baby Bell Ameritech Corp. for $62 billion. But maybe they shouldn't be cheering too loudly just yet.

The proposed deal, while very possibly taking Ameritech out of the video business, would only make SBC a much bigger and more formidable rival in the emerging telecommunications wars.

Indeed, a giant SBC, already preparing to be a distribution partner of DirecTv, could ultimately take on the cable industry for video and high-speed data customers nationwide if so inclined. Or, SBC could become so dominant in its regional markets that cable operators couldn't possibly contest it for telephone customers.

"What SBC-Ameritech does, if you view it the way I do, is create a monopoly so big to change the rules so that the competition doesn't occur," said Philip Sirlin, a telecommunications analyst at Schroder & Co. "Bottom line: That's not good for the cable industry."

**BABY BELL BASICS**

| | SBC | Ameritech |
|---|---|---|
| **Headquarters** | San Antonio | Chicago |
| **Chairman** | Ed Whitacre | Richard Notebaert |
| **1997 rev.** | $25B | $16B |
| **1997 income** | $1.5B | $2.3B |
| **Access lines** | 36M | 21M |

**Sources:** SBC, Ameritech

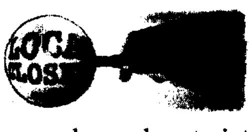
If approved by federal and state regulators, the planned Baby Bell merger, which would be the second-largest in cor-

*See **Consolidation** on page 51*

## Refranchising Terms Increasingly Complex For Cities, Operators

BY K.C. NEEL

City regulators in Fairfax County, Va., and Boston grudgingly renewed cable franchises held by Media General and Cablevision Systems Corp., respectively, last week, but only after they extracted promises of system upgrades and restraint in future rate hikes.



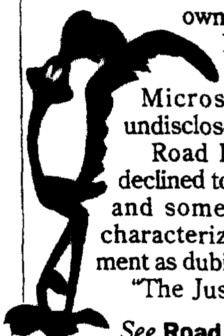

The renewals point up the fact that while cable operators and local au-

*See **Terms** on page 45*

## Microsoft Considers Road Runner Stake

BY K.C. NEEL

Just as Road Runner was preparing to announce some major investments by Silicon Valley giants Intel Corp. and Oracle Corp., sources close to the companies said last week that the Internet-access provider owned by Time Warner Inc. received an unsolicited bid from Microsoft Corp. for an undisclosed equity infusion.



Road Runner executives declined to comment last week and some industry pundits characterized such an investment as dubious.

"The Justice Department is

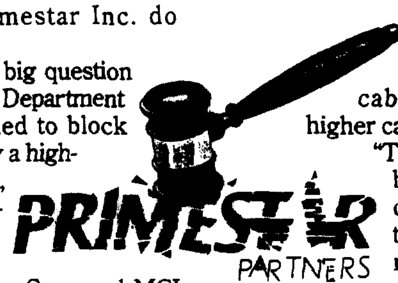
*See **Road Runner** on page 45*

## Justice Dept. Knocks Primestar Partners

BY ALAN BREZNICK

What does Primestar Inc. do now?

That was the big question last week after the U.S. Department of Justice abruptly sued to block Primestar's plans to buy a high-power DBS orbital slot, two high-power satellites and other DBS assets from a venture of Rupert Murdoch's News Corp. and MCI Communications Corp.




Justice Department attorneys filed the civil antitrust lawsuit in the U.S. District Court for the District of Columbia May 12, charging that the proposed $1.1-billion merger of MSO-backed Primestar and the American Sky Broadcasting venture would reduce competition to cable and lead to even higher cable rates.

"They [Primestar's cable backers and ASkyB] decided to switch rather than fight, to merge rather than compete," said Joel Klein, the Justice Department's top antitrust official. "That's bad for competition and bad for America's consumers."

*See **Justice** on page 48*

## News

# Lawmakers, Agencies Weigh In on Telco Merger

BY ERIC GLICK

Reaction inside the Beltway to SBC Communications Inc.'s announcement last week that it would purchase Ameritech Corp. for $62 million ranged from caution to outrage.

William Kennard, chairman of the FCC, said he didn't want to "prejudge" the deal because the commission must approve or deny it over the next several months. However, he acknowledged that the merger raises a number of questions. Chief among them: "Is this merger going to create competition, or will it be a non-aggression pact?"

Kennard said the onus will be on SBC and Ameritech to "demonstrate to me that this is going to result in pro-competitive benefits to the American public."

Besides the FCC, the deal must also receive the U.S. Department of Justice's blessing. Officials at that agency wouldn't comment on the proposal last week. But the government didn't block Bell Atlantic's purchase of Nynex Corp. or SBC's previous purchases of Pacific Bell and Southern New England Telephone Co.

On Capitol Hill, lawmakers almost universally panned the proposed merger. U.S. Sen. John McCain (R-Ariz.), chairman of the U.S. Senate Commerce Committee, said the plan won't bring about the kind of competition that the Telecommunications Act of 1996 promised.

"Companies consolidate when they can't compete," McCain said in a statement. "And consolidation without competition can hurt consumers."

McCain, who said he'd like to "overhaul" the telecom act, also said the law isn't "giving consumers more choice in services, or at least lowering their bills."

U.S. Rep. Billy Tauzin (R-La.), who chairs the U.S. House Telecommunications Subcommittee, withheld any major judgments on the announcement, saying only, "Some of these mergers [are] natural responses of the industry to find its way around the FCC [which has failed] to promote a clear blueprint [for telecom providers to compete in each others' markets]."

Tauzin said the question the FCC must ask is, "[Does the merger] meet the test of promoting competition or does it inhibit competition?"

Rep. Edward Markey (D-Mass.) — the ranking minority member of the House Telecom Subcommittee — was more forthright in his criticism of the proposed merger.

"I believe this merger is bad for consumers, bad for competition and bad for innovation and job growth in the telecommunications industry," he said in a statement last week.

Markey said SBC has engaged in a "scorched-earth litigation strategy to preserve its local monopoly while 'cherry-picking' the portions of the Telecommunications Act that serve its purposes."

Saying SBC is "one of the last and among the largest monopolies left," he urged the FCC and the Justice Department to "vigorously oppose" the deal.

SBC has been the most prominent among the RBOCs in taking on aspects of the Telecommunications Act and the FCC's interconnection order. There's been little, if any, competition in the local loop since the interconnection order has been held up in court. Lawmakers hoped that passage of the telecom act two years ago would spur local loop competition.

rehearing by full court. Justice isn't party to EEO portion of case, but in appeal is expected to file amicus brief backing Commission, just as it did in earlier portion of case. Deadline for FCC to seek rehearing is May 29.

## CAPITOL HILL

House Telecom Subcommittee Chmn. Tauzin (R-La.) said May 12 he will propose legislation in June to require cable operators to be "more flexible" in providing local signals to subscribers. At news conference to announce new 911 legislation, Tauzin said bill would be ready next month, about time he will be lead-off witness at cable rate hearing by Senate Commerce Committee. He wouldn't reveal details of bill but said it would be designed to help consumers for whom cable is only source of local signals as part of multichannel video package. He hinted that it could require more flexibility on part of cable operators in forming packages for consumers, and said that pressure on Congress to do something about cable rates and programming choices will increase as March 1999 deregulation deadline set by Telecom Act approaches.

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U.S. Copyright Office is proposing change that would bring its rules for calculating cable copyright liability into compliance with April 30, 1997, decision on calculations (CM May 5 p8). Change involves royalty fees for carriage of partly permitted/partly nonpermitted distant signals. Comments are due June 15.

## TELCO-CABLE

Ameritech cancelled teleconference touting its success with cable overbuilds, scheduled for May 13, following announcement of takeover by SBC. Cancellation spurred speculation as to impact of takeover on Ameritech overbuilds, particularly since SBC has pulled out of most cable ventures. SBC has sold its interest in cable systems in Montgomery County, Md., and Arlington, Va., and scaled back Pacific Telesis's wireless cable operations after that takeover. Ameritech is by far largest cable overbuilder, with more than 70 midwestern cable franchises potentially


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## News

# Chicago Busts Cable Ops on Late Fees

*Rate reduction part of city's agreement to approve franchise renewal*

BY K.C. NEEL

Chicago's city council is scheduled to vote shortly on two 15-year cable franchise renewals that will, among other things, reduce customers' late fees to $1.50.

The council is also expected to determine whether it should give Ameritech a 15-year franchise to overbuild a cable system in the South Side.

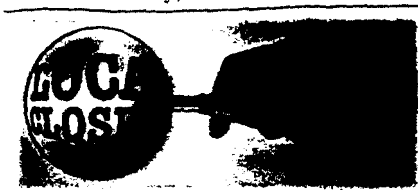
The long-sought reduction in late fees was a key feature for the city renewing cable franchises held by Prime Cable and Tele-Communications Inc., said city cable administrator Joyce Gallagher. Under the plan, fees charged to consumers who've paid their bills late now range from between $5 and $7.50. Those charges will be rolled back to $1.50 and tacked onto bills that are more than 30 days late. After 47 days, the cable companies will be free to recoup fees associated with collections.

The fee rollback was a coup for Chicago since the issue has been a contentious one in other cities. "These fees were excessive," Gallagher said. "There was no substantiation for such high fees."

But not only did the city get the cable operators to promise to roll the fees back, they also agreed that if the state or federal government mandates a lower fee than $1.50, they'll reduce the fee and if the government sets a higher fee than $1.50, they won't lift their late fee beyond that level, Gallagher said.

Some industry watchers speculated that TCI and Prime, which count about 1 million metro area customers, had no choice but to agree to the rollback because Chicago Mayor Bill Daley threatened to hold up the renewals unless the late-fee issue was resolved.

The MSOs also agreed to pony up a total $22.2 million over the 15-year franchise to fund the non-profit public access corporation in the city; dedicated 10% of their channel space to PEG channels; and Prime Cable agreed to spend $20 million to upgrade its operations to 750 MHz from its current 550 MHz. TCI spent $30 million three years ago to upgrade its operations.



Meanwhile, the cable administrator's office has recommended that the council OK a cable franchise for Ameritech to overbuild TCI's service territory on the South Side of the city. Gallagher said the telco's proposal has been sent to the council's finance committee, which will consider the issue and subsequently make its recommendations to the entire council likely later this summer.

The telco that is merging with SBC Communications is continuing its march across the Midwest securing cable franchises even as some industry observers are predicting the business will be shut down once Ameritech and SBC marry later this year.

Ameritech currently offers cable TV service to residents in more than 50 cities and towns in the Chicago, Cleveland, Columbus and Detroit metropolitan areas, including Arlington Heights, Des Plaines, Elgin, Glen Ellyn, Glendale Heights, Naperville and Prospect Heights, Ill.

The city council in Des Plaines, Ill., last week gave its blessing to Ameritech, which said it'll build a competing cable system in the area. Part of Des Plaines is served by TCI, while other portions of the city receive cable service from MediaOne.

Ameritech has promised area residents they'll receive more than 85 channels of video programming including ESPN, CNN, A&E and Nickelodeon, among other services, plus Ameritech's in-home movie service called express cinema, an 18-channel service that will deliver up to 25 new movies every month, with popular movies starting as often as every 30 minutes. New movies premiere every Friday and Saturday.

But those services may be hollow promises to consumers if SBC closes down Ameritech's video operations. San Antonio-based SBC has been aggressive in closing down its own video operations as well as those initiated by Pacific Telesis, which merged with SBC last year. CW

# Ops Await SBC/Ameritech Fallout

Continued from page 1
Washington, D.C., area to a group including Prime, and shuttering its cable system in Richardson, Texas.

SBC has a pending deal to buy Southern New England Telecommunications Corp., as well, and many Wall Street analysts believe that deal could signal the end to SNET's plan to overbuild cable operators throughout its Connecticut territory.

Furthering the perception of a pullback from wired cable, in March, SBC announced resale agreements with direct-broadcast satellite providers DirecTv Inc. and U.S. Satellite Broadcasting.

But operators that have been overbuilt by ANM are not crowing yet. Said Edward Wood, CEO of Coaxial Communications, which competes with ANM in Columbus, Ohio: "Our philosophy is to believe what they've said. They're in for the long term, and we're in for the long term, and we can't afford the luxury of speculating that they're not going to be."

The Ameritech deal will probably take at least a year to close, the two companies figured. In the meantime, it's "business as usual," spokesmen from both companies said.

SBC chairman Edward Whitacre Jr., in one of his few comments on Ameritech's cable business, told analysts in New York last week that "Ameritech has done video differently from how SBC has done it, and they do have some good properties that we will look at and closely examine," an SBC spokesman confirmed.

ANM vowed to keep adding to its current roster of 72 cable franchises in the Chicago, Detroit, Cleveland and Columbus areas. In at least some markets, ANM claims that its Americast customers outnumber those of the incumbent cable operators.

Last week, ANM kicked off service in Trenton, Mich., which it said gives it 50 operating markets. And ANM officials are scheduled to meet with Chicago officials Wednesday (May 20) about their application for a franchise covering a big chunk of the city. About 30 additional franchise agreements are in the works, according to Donna Garofano, ANM's vice president of public affairs.

Garofano said a few franchise authorities called her last week, asking what the merger would mean for Ameritech's cable commitments. She said she basically told them, "We intend to fulfill our commitments, and this is business as usual."

The cable industry has seen a lot more consolidation than the regional phone business has, Garofano noted, and many franchise authorities have dealt with three or four new owners of their local cable systems. If anything, this "prospective merger, down the road," means less work and worry for them, she said. SBC — the share price of which has fallen since before the deal was announced, trimming the value of the all-stock deal — laid out plans to compete for residential and business customers outside of its service territory as part of a campaign to persuade regulators that the deal would enhance competition. Whitacre told analysts last Monday that the combined company would enter 30 cities outside of its combined 13-state (with SNET) region, claiming that the scale economics of the new entity would make such a strategy economical.

> *"We intend to fulfill our commitments, and this is business as usual."*
>
> *Donna Garofano, vice president of public affairs, Ameritech New Media*

The deal could face a tougher time than past Bell mergers, anyway. Senate Commerce Committee chairman John McCain (R-Ariz.) lamented the apparent results of the 1996 Telecommunications Act. Since then, he said, "we have seen consolidations within the industries; we have seen mergers, rather than competition; and we have seen increased rates, whether they be in cable, or local, or long distance — indicating again that the 1996 Telecommunications Act, whether it was intended so or not, protected industries and protected everybody but the consumer. It again argues for a re-evaluation of the unintended consequences of the Telecommunications Reform Act of 1996."

Some state regulators will have a say, as well. In Ohio, for example, state law gives the Public Utilities Commission jurisdiction over the acquisition of a domestic telephone company. "The commission will certainly want to look at the impact, if any, on competition," PUCO spokesman Dick Kimmins said. "It will want to see if Ameritech customers will benefit from this." The PUCO will likely want to look at how SBC proposes to deal with Ameritech's inability in the past to meet the commission's minimum-service standards.

In addition to facing video competition from the telcos, cable operators that want to offer phone service have to deal with phone companies on network-interconnection agreements.

One cable-industry executive last week worried that SBC's corporate philosophy — which he characterized as "blatantly anti-competitive" — could result in trouble down the road for the RBOC and its potential competitors.

"As difficult as Ameritech can be to work with, SBC is seen as the RBOC that is even tougher to deal with," the industry official said. "At least Ameritech gives lip service to the benefits of competition. SBC doesn't even do that." That approach, he said, could backfire on SBC and prompt some state regulators to take a hard line on approving the deal.

Tele-Communications Inc. president and chief operating officer Leo J. Hindery Jr., whose cable systems compete against ANM's in Trenton and elsewhere, said he had no feel for whether SBC would throttle back Ameritech's cable ambitions.

But Hindery, who is also chairman of the National Cable Television Association, said, "I do believe that the merger is helpful to our industry from a public-policy point of view, in that it suggests, at least to me, that our industry represents the best wireline alternative to big telephone companies. If people are questioning the '96 Act, they should perhaps question [the merged] Bell Atlantic [Corp.]-Nynex [Corp.] and SBC-PacBell [Pacific Bell]/Ameritech more than they are doing right now." **MCN**

*Ted Hearn and Joe Estrella contributed to this report.*

PROGRAMMING

# Pax Net Will 'Touch' Comcast

By LINDA MOSS

Comcast Corp. has reached an affiliation deal to carry Paxson Communications Corp.'s new family-oriented network, Pax Net, in markets including Baltimore and Indianapolis, officials said last week.

By Aug. 31, when the new network launches, Comcast will roll out Pax Net in a number of DMAs where Paxson doesn't own TV stations, in order to fill in distribution for the new programming service. The Comcast deal covers both analog and digital carriage, "with built-in channel-placement incentives," according to an announcement on the deal.

Comcast will launch Pax Net on three systems in its Baltimore cluster, as well as in Indianapolis and Fort Wayne, Ind., and Chesterfield, Va., by the end of August, an MSO spokeswoman said. Those launches will total about 500,000 subscribers.

"That's the initial launch," the spokeswoman said. "The rest of it has not been determined."

Paxson is offering operators upfront launch fees — reportedly up to $6 per subscriber — for analog carriage. MSOs are also being paid incentives to give Pax Net favorable channel placement.

In late April, Tele-Communications Inc. signed affiliation agreements with both Pax Net and with The WB Television Network for its WeB cable service. Both of those broadcast networks are turning to cable systems to gain distribution in markets where they don't have TV-station affiliates. The WeB also has a distribution deal with Time Warner Cable, its corporate sibling under the Time Warner Inc. umbrella.

TCI will reportedly launch Pax Net in systems representing 4.5 million subscribers.

The WeB hasn't unveiled any additional affiliation agreements since its announcements about the TCI and Time Warner deals.

Last week's deal only related to around one-third of Comcast's systems, since about two-thirds already carry Paxson's TV stations under must-carry, a Paxson spokeswoman said.

Paxson now owns or has pending deals to acquire 86 TV stations, reaching more than 73 million homes that will get Pax Net programming. The company is seeking cable carriage to extend its distribution to more than 80 percent of U.S. TV households.

Earlier this year, Paxson recruited Jeff Sagansky, a former top official at Sony Corp. and the CBS network, as its CEO. And the company has already acquired a raft of off-network programming — including *Touched by an Angel*; *Promised Land*; *Dr. Quinn, Medicine Woman*; and *Life Goes On* — to air in primetime. Pax Net also had original programming in the works, including the series *Flipper* and Louisa May Alcott's *Little Men*. MCN

**NEWEST CABLE AFFILIATE:** Comcast Corp. will launch Pax Net, which airs such family-oriented shows as *Touched by an Angel*, in areas where the broadcast network does not have affiliates.

# Ops Take New Look at Launch Fees

**EASY MONTHLY TERMS:** CBS Eye on People executives said cable operators' appetite for launch fees has faded. CBS offered $6 per subscriber to operators in a deal that it termed as "a loan."

**Continued from page 8**

ously proffered, more in the $3- to $5-per-subscriber range.

Officials at Great American Country and Game Show Network have said they are in a launch-fee mode, as is E! Entertainment Television's new Style network, which will debut in September. E! president and CEO Lee Masters said he will offer "aggressive" launch fees to get Style analog carriage, but "not Murdochian dollars," referring to the $10 a head paid for Fox News Channel.

Some programmers, who didn't want to be identified, maintained that cable operators aren't interested in upfront cash fees anymore. These operators would rather get other launch incentives — free carriage for a few years, for example, or terrestrial exclusivity — according to the network officials. But one MSO executive said that was "wishful thinking" on the part of the programmers.

"There are still fees to be had," that MSO programming official said. "There are $3-per-subscriber deals out there right now."

But operators, and even DBS providers, said they are being much more discriminating about which upfront launch fees they will take. There are a variety of reasons for this caution, but part of it is based on their experiences with the first big round of cash payouts.

### NO FREE LUNCH

In some cases, operators learned that while the upfront money looked good at first blush, the deals were capped by escalating license fees that ultimately just didn't make financial sense. And operators also found out that not all upfront cash fees are alike: Some were really just loans to cable systems, and not outright gifts.

"Nobody was giving away free money way back down the road," said Bob Wilson, vice president of programming at Cox Communications Inc.

In addition, one top network executive and a number of operators said federal regulators are taking a look at upfront cash-launch fees, prompting some MSOs to pass up opportunities to take the money now.

In other instances, the corporate headquarters of some MSOs cracked down and mandated that their local systems amortize the upfront cash fees over time, making them less attractive.

All three DBS providers — facing limited bandwidth, just like cable operators, and now the size of some large MSOs — are talking to new programmers about upfront launch fees. But they are being careful, too, about which offers they take.

"There is no such thing as a free lunch," said Denny Wilkinson, senior vice president of marketing and programming for PrimeStar Inc. "If programmers are giving you something upfront, they're usually getting something in the back end. I just want a fair price and a fair return when you pay me upfront."

### PERFORMANCE COUNTS

Jedd Palmer, MediaOne's senior vice president of programming, said there are several reasons why upfront launch fees are somewhat less prevalent and less in vogue than they were a few years back.

"A couple of networks that launched for a fee haven't really performed," Palmer said, "so people are more concerned with their long-term performance."

Also, it's too expensive for smaller networks to launch with big upfront fees now, and giant programmers, such as Murdoch, have already paid for distribution, according to Palmer.

"The guys with a large amount of money have done it already," he said.

In fact, Wilkinson said he gets leery when a tiny start-up network with little distribution offers substantial upfront launch fees.

"I wonder how long they'll be around and what kind of a business plan they have, because it doesn't make sound financial sense for them to be paying big fees," he said.

Cox received upfront launch incentives to roll out HGTV, which is virtually fully distributed across the MSO now, according to Wilson. But the decision to carry the network was "programming-driven," he said.

"We liked the programming," Wilson said. "We always start with the programming. If we like the programming, the launch incentive was a cherry on top of that."

But in today's channel-locked environment, Wilson said, the new networks offering upfront launch fees don't have that appeal in terms of unique programming.

"A few [of the networks offering launch incentives] that I know of now won't provide anything materially to differentiate us," Wilson said. "You ask: Does it add material value to your lineup?"

The fees can make for bad consumer press, too. Last year, a TV critic responding to *Multichannel News'* annual TV-writers' survey complained about Animal Planet, questioning whether such a niche channel was necessary. That critic pointed out that operators had been paid to carry Animal Planet.

### LOOKING FOR VALUE

Ron Martin, chief operating officer of Buford Television Inc., recently launched two new networks. In one case, he said, he took upfront launch fees. In the other, he opted for initial free carriage of the new network.

"When we have to make the decision between upfront launch fees or free service, I'm looking at the value of the package over time," Martin said. "If I get a payment upfront, I can put the money somewhere and make interest on it. You have to work the math and figure out the value of the use of the money."

Whether or not to take a launch fee hinges on the specifics of the offer, Martin and other operators said.

"There are different kinds of deals," Martin said. "With some launches, where you get launch fees, it's like lending you money. The deal requires significant distribution and a high license fee for many years. We've tended to stay away from those deals."

Harron Communications Corp. is being more careful about taking launch fees because ultimately, license fees for new networks add up, and consumers are sensitive about having those costs passed on in their cable bills.

"We are looking much further down the road as to where rates are going and if adding product for launch fees is the way to go," said Linda Stuchell, Harron's vice president of programming. "All things being equal, we're happy to take launch fees. But for most of these services, ultimately, there is a license fee. If you add up three or four new services, and then have hikes on the old ones, it adds up. And customers are very sensitive about rates."

Some cable systems were able to use upfront launch fees to offset financial hits during given periods.

"The launch fees were great to help you through a tough year," said one operator, who asked not to be identified. "We received tons of it. It's great to have it, but you tend to rely on it. And now, our accountants and auditors are looking more carefully at it."

### JUST A LOAN

That operator noted that networks had varying deals for their launch fees. In some cases, the upfront cash was essentially a loan that had to be treated as a liability on the cable system's financial books, the operator said. This meant that the system would have to pay back the launch money to the programmer if the system was ever sold, for example, and that the new owners didn't want to continue rolling out the network.

In contrast to that operator, Cable One has not treated its upfront launch fees as a one-time windfall, according to Jerry McKenna, its vice president of strategic marketing.

"We look at the net effect over the rate," he said. "We smooth the launch fees and amortize them over the terms of the agreement, rather than taking the fee one year and then having our costs escalate later."

CBS Cable offered operators $6 per subscriber to launch Eye on People, but the deal was truly a loan, said Lloyd Werner, executive vice president of sales and marketing for CBS Cable.

"Our offer was a bank," he said. "We would give an operator up to $6 per subscriber. In exchange, the operator would pay us 10 cents per month, per subscriber, for 72 months, on top of our license fee. So we got paid $7.20 over the term of the deal, when we only paid $6."

As it turns out, only "a few, a very small minority" of operators took up Eye on People on its launch-fee offer, Werner said. He estimated that only about 500,000 of its roughly 10 million subscribers were the result of cash launch fees.

"It [the upfront launch fee] was an attempt to show that we were willing to get behind Eye on People," Werner said. "And we still get inquiries about it. There is no question that operators are still looking for money in one form or the other — cash upfront, co-op money, advertising support for a launch. They are always looking for some kind of inducement. A&P, Safeway — all of them do the same thing: look for compensation for shelf space."

Lynne Buening, vice president of programming for Falcon Cable TV Corp., said it's only fair that operators get compensated by programmers for their valuable analog shelf space.

"For analog, it's [upfront launch money] still an issue," Buening said. "It's prime real estate. It's Malibu. There's a value to that."

### COMPETITIVE EDGE

In some cases, the threat of competition from DBS has cable operators looking less toward launch fees and more toward adding networks that will give them a competitive edge, according to one new programmer.

"Competition rules over what you could offer anyone [in launch fees]," the programmer said. "Operators are being more discriminating. The primary thing is to match up well against your competitor."

Pam Burton, director of marketing at Prime Cable, has a 10-point system that she uses to assess whether or not to carry a new network. That plan includes whether her customers want the network, whether it adds value, its license-fee costs and its local ad-sales potential.

"First, you have to decide if you want to carry the network, and then, the issue of launch fees is brought up during negotiations," Burton said.

Similarly, Marcus Cable Co. L.P. considers upfront cash incentives as just one factor to look at in giving a network carriage.

"We have never chased after deals based solely on launch fees," said Lou Borelli, executive vice president and chief operating officer at Marcus. "But we do think that kind of compensation is an important component of a deal."

During its negotiations, in addition to weighing potential launch fees, Marcus typically looks for "long-term license-fee security," according to Borelli. "It's a balancing act," he said.

At least one MSO hasn't taken upfront launch fees in the past, and it won't in the future: Charter Communications Inc.

"Charter has never done cash-for-carriage deals," said Patty McCaskill, its vice president of programming. "Our channel capacity is not for sale to the highest bidder."

She added, "We are trying to look at ways to keep rates low. We are interested in terrestrial exclusivity, and we want license-fee relief, like free carriage, so that we can introduce new product and not charge our subscribers higher fees." MCN